IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4506 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHARDABEN F PATEL - Petitioner(s)

Versus

DIST DEVLOP OFFICER – Respondent(s)

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Appearance :

NOTICE UNSERVED for Petitioner(s) : 1,
MR HS MUNSHAW for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 03/02/2006

ORAL JUDGMENT

1. The petitioner has filed this petition under Article 226 of the Constitution of India,

praying for quashing and setting aside the impugned order dated 30.6.19888 whereby the recovery of the rent in respect of the Taluka Panchayat Quarter occupied by her would be made at market rate of Rs.793.90 ps per month from the salary of June 1988 paid in July 1988 and the rent in arrears on that basis for the period from 13.9.1987 to May, 1988 would be recovered in 10 equal monthly installments. The petitioner has also prayed for the direction that the proceedings under the Gujarat Public Premises (Eviction of Unauthorized Occupants) Act, 1972 be disposed of strictly in accordance with law.

2. The petition was admitted and rule was issued on 12.10.1988 and by way of interim relief recovery of rent on the basis of market rent was stayed. The petition was originally filed on behalf of the petitioner by her advocate,

namely, late Shri M.K.Joshipura. After his death, fresh notice was issued to the petitioner on 17.2.1992. However, the bailiff has made an endorsement that the petitioner was not staying at the address given in the petition and she has been transferred. The Board also shows that the petitioner was not served because the petitioner has been transferred to another place. Be that as it may, since the petition is of 1988 and petitioner has not cared to intimate the fresh address, the Court is not inclined to adjourn this matter and proceeds to decide this matter on its merit.

3. It is the case of the petitioner that the petitioner is a State Government Officer in the Gujarat State Development Service Class-II. The petitioner was sent on deputation to Panchayat Service in the Banaskantha District since the

year 1983. The petitioner was holding the post of Taluka Panchayat Officer upto 12-6-1987 and by occupying a residential quarter on usual rental basis in accordance with the provisions of BCSR 849(d) that is to say, she was liable to pay standard rent at Rs.220/- p.m in respect of the Panchayat Quarters.

4. The petitioner has been transferred from the post of Taluka Development Officer, Palanpur to the post of Development Officer (Small Savings) Palanpur under the same District Panchayat under the Development Commissioner, Gujarat State Order No.NMK(M-I) T.V.A. 1237 dated 19.5.1987. The transfer was within one and the same cadre. The petitioner relinquished charge of the post of Taluka Development Officer, Palanpur on 12.6.1987. The petitioner's successor in office, namely, Taluka Development Officer, Palanpur, under his letter dated

17.7.1987 informed her to vacate the residential premises within 7 days from the date of receipt of the letter although he was not competent to make such order to an officer equal to him in status. The petitioner's transfer from one post to another was not a transfer within the meaning of BCSR 9 (58) and allotment of quarters had not been determined by the competent authority. The petitioner, therefore, made a detailed reply to the Taluka Development Officer vide letter dated 23.7.1987 explaining the correct position, as also inviting his attention to the provisions of the Gujarat Public Premises (Eviction of Unauthorized Occupants) Act, 1972 which lay down strict procedure for getting the premises vacated by orders of competent authorities and simultaneously the aggrieved party is conferred with a right of appeal to the District Court.

5. It is also stated in the petition that while the eviction proceedings under the 1972 Act were pending, the petitioner could not be held liable to pay market rent of the quarter occupied by her as directed in the impugned letter dated 30.6.1988 of the District Development Officer, Banaskantha, Palanpur. The petitioner has, therefore, approached this Court for quashing and setting aside the aforesaid order and for following the due procedure laid down in Gujarat Public Premises (Eviction of Unauthorized Occupants) Act, 1972 for the purpose of getting eviction of the petitioner from the quarter in question.

6. An affidavit in reply is filed by the Deputy District Development Officer (Revenue) Banaskantha District Panchayat. Mr.H.S.Munshaw, learned advocate appearing for the respondent has submitted that the petition is thoroughly

misconceived and neither maintainable nor tenable at law. He has further submitted that no fundamental rights of the petitioner have been violated by the respondent and, therefore, the petitioner is not entitled to approach this Court. He has further submitted that it is not correct to say that the rent was charged to the petitioner at market rate in respect of the Taluka Panchayat quarter occupied by her from 13.9.1987 to May, 1988. He has further submitted that the petitioner was unauthorizedly occupying the quarter of the Taluka Panchayat, Palanpur which was being rented to Taluka Development Officer of Palanpur Taluka Panchayat. Even after the transfer, the petitioner was occupying the said quarter inspite of several reminders. It is further submitted that till the issuance of the impugned order the petitioner was occupying the said residential quarter unauthorizedly. He

has further submitted that the said quarter was owned and administered by the Palanpur Taluka Panchayat and it is reserved for residential purpose of Taluka Development Officer. The said quarter was allotted to the Taluka Development Officer till he was holding the charge of the post. He has further submitted that immediately on the transfer, retirement etc., the said quarter is to be vacated so that he/she successor can be allotted the same. He has further submitted that the present Taluka Development Officer, Palanpur was residing in the private premises and was paying Rs.350/- towards rent per month, as the said quarter was not vacated by the petitioner even after one year and three months of her transfer. As admitted by the petitioner she was paying Rs.220/- per month as per the rules and regulations. He has further submitted that a Government Resolution dated 22.10.1982 was

issued by the Deputy Secretary to the Government of Gujarat, Building and Communication Department, which has been followed by the respondent / the Executive Engineer, Roads and Building, Palanpur was directed to work out the rent of the residential quarter being occupied unauthorizedly by the petitioner at the market rate. He has, therefore, submitted that the quarter in question was occupied by the petitioner unauthorizedly upto 12.9.1987 and hence the order was passed by the respondent No.1 on 30.6.1988 asking the petitioner to pay rent at the market rate.

7. After having considered the averments made in the petition as well as after having heard the learned advocate for the respondent and after having considered the affidavit in reply as well as documents attached therewith, the Court

is of the view that once the petitioner is transferred it is obligatory on his/her part to vacate the quarter. The endorsement shows that on or after March 1992 petitioner was not in any of the offices within the territorial limit of Banaskantha District. It is also not certain as to whether on or after March, 1992 the petitioner was occupying the said quarter. Since the petitioner was stated to have served in the territorial limit of Banaskantha till 1992 and since the stay was operative against recovery of rent at the market rate, no rent at the market rate may be recovered from the petitioner. However, after 1992 if the petitioner was serving else where and if the petitioner has not vacated the said quarter, the respondent is entitled to recover rent at the market rate and respondent is also entitled to get the said quarter evicted from the petitioner.

8. Since the petitioner is not present and no advocate is appearing on her behalf the aforesaid direction is issued. Liberty is reserved to the petitioner to approach this Court if she is aggrieved or if need so arises in future.

9. With the aforesaid direction and observation this petition is accordingly dismissed. Rule is discharged without any order as to costs. Interim relief stands vacated.

(K. A. PUJ, J.)

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